

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL JOSE RUIZ,
Petitioner,

v.

PATRICK COVELLO,
Respondent.

Case No. [21-cv-07395-RMI](#)

ORDER

Petitioner, a state prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also consented to the jurisdiction of a Magistrate Judge. dkt. 5. Petitioner indicates that a habeas petition is still pending in state court and he intends to seek a stay in this case. dkt 1 at 5. However, no motion for a stay has been filed.

The United States Supreme Court has held that a district court may stay mixed habeas petitions to allow the petitioner to exhaust in state court. *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). *Rhines* requires a petitioner to show (1) “good cause” for his failure to exhaust his claims in state court; (2) that his unexhausted claims are not “plainly meritless”; and (3) that he has not engaged in “intentionally dilatory litigation tactics.” *Rhines*, 544 U.S. at 278.

If petitioner seeks to stay this case, he must file a motion for a stay within **twenty-one days** of service of this order addressing the *Rhines* factors set forth above. Failure to file a motion for a stay may result in this petition being dismissed.

IT IS SO ORDERED.

Dated: December 2, 2021


 ROBERT M. ILLMAN
 United States Magistrate Judge